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PREVENTION OF SIGNIFICANT AIR QUALITY DETERIORATION

Proposed Rulemaking

EXHIBIT F

ENVIRONMENTAL PROTECTION AGENCY

[40 CFR Part 52]

APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

Prevention of Significant Air Quality Deterioration

Notice is hereby given that the Administrator of the Environmental Protection Agency (EPA) intends to issue regulations setting up a mechanism for preventing significant deterioration of air quality in areas where air pollution levels currently are below the national ambient air quality standards (40 CFR Part 50). These regulations would be issued under the Clean Air Act and would prescribe steps to be taken by the States. This notice sets forth four proposed plans reflecting various approaches to defining and preventing significant deterioration. It is the Administrator's intention not only to receive written comments on these proposals but also to hold public hearings in various places in order to provide the greatest possible opportunity for public involvement in this rule-making. Certain questions on which public comment is specifically invited are identified in the concluding section of this preface.

Publication of this notice is related to a suit filed May 24, 1972, in which the Sierra Club and other groups sought a declaratory judgment and injunction requiring the Administrator to disapprove all State implementation plans which did not contain procedures for preventing significant deterioration in any portion of any State where air quality is superior to national standards. On May 30, 1972, the District Court for the District of Columbia granted the plaintiffs' motion for a preliminary injunction and issued a preliminary injunction requiring the Administrator, within four months thereafter, to review all State plans and "disapprove any portion of a State plan which fails to effectively prevent significant deterioration of existing air quality." The preliminary injunction also required the Administrator to promulgate regulations "as to any State plan which he finds, on the basis of his review, either permits the significant deterioration of existing air quality in any portion of any State or fails to take the measures necessary to prevent such significant deterioration." On November 1, 1972, the decision of the District Court was affirmed by the U.S. Court of Appeals for the District of Columbia Circuit on the basis of an opinion filed by the District Court on June 2, 1972. Subsequently, the U.S. Supreme Court stayed the effect of the District Court's decision pending its consideration and disposition of the case on application for a writ of certiorari. On June 11, 1973, the Supreme Court, by an equally divided court, affirmed the judgment of the Court of Appeals; no opinion was issued.

Each State plan has been reviewed in accordance with the preliminary injunction issued by the District Court. Although many State plans included regulations which have the potential for resulting in the attainment of air quality better than that required by the national standards, and although some State plans contained general policy statements indicating an intent to prevent or minimize deterioration of air quality, none was found to contain explicit and enforceable regulations for implementing such a policy. Accordingly, all State plans were disapproved by the Administrator on November 9, 1972 (37 FR 23836), insofar as they failed to provide for the prevention of significant deterioration. This disapproval did not affect the status of any previously or subsequently approved regulations designed to provide for the attainment and maintenance of national ambient air quality standards. Furthermore, in the absence of Federal regulations prescribing requirements for prevention of significant deterioration the Administrator's disapproval was necessarily based on a generalized assessment of the State plans. To the extent that any State plan is determined to meet any of the requirements ultimately established as a result of this rulemaking proceeding, the Administrator's disapproval will be appropriately modified.

In EPA's view, there has been no definitive judicial resolution of the issue whether the Clean Air Act requires prevention of significant deterioration of air quality. When the issue was presented to the Supreme Court, the Court was equally divided. The Court's action had the effect of permitting to stand the judgment of the Court of Appeals for the District of Columbia Circuit, which was entered in the procedural context of the issuance of a preliminary injunction.

In the absence of a definitive judicial decision on the issue, the Administrator adheres to the view that Section 110 of the Clean Air Act requires EPA to approve State implementation plans that will attain and maintain the national ambient air quality standards, and that the Act does not require EPA or the States to prevent significant deterioration of air quality. The proposed alternative regulations set forth herein would establish a mechanism for preventing significant deterioration pursuant to the preliminary injunction issued by the District Court.

Public Policy Issue

The question raised by the Sierra Club suit was a legal issue, i.e., interpretation of the language and legislative history of the Clean Air Act. Thus, the courts were asked to determine that the Act requires the Administrator to ensure that State implementation plans will not permit significant deterioration of air quality. What the courts were not asked to determine is what constitutes significant deterioration and exactly how it will be prevented.

A national policy of preventing significant deterioration, however defined and implemented, will have a substantial impact on the nature, extent, and location of future industrial, commercial, and residential development throughout the United States. It could affect the utilization of the Nation's mineral resources, the availability of employment and housing in many areas, and the costs of producing and transporting electricity and manufactured goods. Without implying any judgment as to the general acceptability of any of the effects of a "no significant deterioration" policy, the Administrator believes that they are potentially so far-reaching that the question of how such a policy should be defined and implemented cannot properly be addressed, much less decided, on narrow legal grounds. Rather, it is a question that must be discussed, debated, and decided as a public policy issue, with full consideration of its economic and social implications. To approach the question in any other manner would be much too simplistic. There is, perhaps, no other environmental issue that imposes upon the Administrator, and the public, a greater obligation to formulate and objectively evaluate a range of possible solutions. The usual rulemaking procedure of putting forth a single proposal clearly is inadequate in this case. Accordingly, this notice sets forth four alternative sets of proposed regulations based upon different philosophies and administrative approaches to defining and preventing significant deterioration.

Current Constraints on Deterioration

It is important to recognize that many State plans, as well as certain rule making actions already completed under provisions of the Clean Air Act, will have the effect of attaining or maintaining air quality significantly better than the national secondary standards in many places, and that these actions will have the effect of generally improving air quality nationwide. The following paragraphs summarize the more significant of these actions, and there is no intent that the alternatives proposed herein should in any way mitigate the impact of these actions.

1. The Administrator has promulgated (36 FR 8186) national primary and secondary ambient air quality standards. In accordance with the Act, the primary standards were set at a level that provides an adequate margin of safety for protection of the public health, and secondary standards were set at a level that protects the public welfare from any known or anticipated adverse effects. All States have submitted implementation plans to attain and maintain these standards. In many areas of the country, air quality was not sufficient to meet these standards and, hence, in these areas, the State plans will ensure that deterioration cannot occur because the regulations require specific improvements in air quality.

2. Emission control actions to be taken by the States, in accordance with their plans to implement the National Ambient Air Quality Standards in heavily polluted areas, will reduce air pollution concentrations in the periphery of such

areas. For example, the annual average sulfur dioxide concentration in Mercer County, New Jersey, is expected to drop from about 25 micrograms per cubic meter to about 10 micrograms per cubic meter (as compared to the national secondary standard of 60 micrograms) as a result of emission reductions in and around Philadelphia.

3. Emissions reductions to be achieved under State plans in major urban and industrial centers will significantly affect total national emissions and thereby lower the background pollutant concentrations in rural areas. Thus a 25 percent reduction in the background concentration of particulate matter (from about 40 micrograms per cubic meter to about 30 micrograms) in rural areas in the Northeast is anticipated.

4. Emission limitations and other regulations, including restrictions on the sulfur content of fossil fuels as prescribed by many State plans, go beyond what is minimally necessary for attainment of the national standards. In many instances, emission control regulations necessary for attainment of national standards in the most polluted area(s) of a State have been applied statewide. For sulfur dioxide, this has occurred in 33 States. Although implementation of these regulations may be deferred in some clean areas in order to make available low sulfur fuels for use in heavily polluted areas, these regulations will eventually result in further improvement in air quality in many areas where the secondary standards were not exceeded.

5. Federal emission standards for new motor vehicles will result in a steady decrease in motor vehicle emissions in all parts of the Nation through the 1970's and well into the 1980's, as new automobiles equipped to meet these emission standards replace older models which were subject to less restrictive emission standards or none at all. For example, 1974 model automobiles will have emission reductions (per mile) of approximately 80% for carbon monoxide, 70% for hydrocarbons, and 35% for oxides of nitrogen, as compared to vehicles sold prior to 1969. This trend is a result of the Federal emission standards already in effect; it will be accelerated by the even more stringent emission standards due to take effect in the 1975 and 1976 model years.

6. Control of sulfur dioxide, nitrogen oxides, and hydrocarbon emissions to meet national ambient air quality standards and/or Federal emission standards for new stationary sources and motor vehicles can be expected to inhibit atmospheric reactions involving these pollutants and thereby reduce ambient air concentrations of particulate matter such as sulfates, nitrates, and organics. Current State implementation plans generally do not consider this secondary reduction of particulate levels.

It can be seen that there are very strong regulatory measures in existence to prevent any deterioration of air quality in regions where the national standards are currently exceeded. Strong regulatory measures also exist to insure that air quality in currently clean areas cannot deteriorate sufficiently to subject the public health or welfare to any currently quantifiable adverse effects. Although the effect of these regulations is to mitigate any deterioration in most sections of the country, the alternatives presented herein are intended to prevent, in accordance with the District Court's preliminary injunction, any significant deterioration of air quality in any portion of any State.

Conceptual Issues

Section 109 of the Clean Air Act requires the Administrator to establish national primary ambient air quality standards "to protect the public health" and national secondary ambient air quality standards, "to protect the public welfare from any known or anticipated adverse effects," including, as specified by section 302(h), "effects on soils, water, crops, vegetation, man-made materials, animals, wildlife, weather, visibility, and climate, damage to and deterioration of property, and hazards to transportation, as well as effects on economic values and on personal comfort and well-being." Such national standards must be based on air quality criteria which, under section 108, must "reflect the latest scientific knowledge useful in indicating the kind and extent of all identifiable effects on public health and welfare which may be expected from the presence [of air pollutants] in the ambient air, in varying quantities." Thus, standard-setting under section 109 is necessarily limited to demonstrable or predictable adverse effects which can be quantitatively related to pollutant concentrations in the ambient air.

The basis for preventing significant deterioration therefore lies in a desire to protect aesthetic, scenic, and recreational values, particularly in rural areas, and in concern that some air pollutants may have adverse effects that have not been documented in such a way as to permit their consideration in the formulation of national ambient air quality standards. Pending the development of adequate scientific data on the kind and extent of adverse effects of air pollutant levels below the secondary standards, significant deterioration must necessarily be defined without a direct quantitative relationship to specific adverse effects on public health and welfare. It should be emphasized that defining significant deterioration in this way does not imply a judgment by EPA on the question of whether it is sound public policy to define "deterioration" as any increment above existing air pollution levels and to attempt to define "significant" deterioration in the absence of documentation on the adverse effects thereof. Furthermore, it is possible, indeed probable, that even when there are additional data, it will be evident that there are levels below which some of the pollutants covered by national standards do not have effects that can be considered adverse to public health and welfare.

To the extent that the Act provides any basis for defining significant deterioration, it does so only in section 101(b)(1), which declares that one of the purposes of the Act is "to protect and enhance the quality of the Nation's air resources so as to promote the public health and welfare and the productive capacity of its population". Additional guidance is available from the legislative history; specifically, the Report of the Senate Committee on Public Works (Report No. 91-1196, dated September 17, 1970) contained the following statement:

> In areas where current air pollution levels are already equal to, or better than, the air quality goals, the Secretary should not approve any implementation plan which does not provide, to the maximum extent practicable, for the continued maintenance of such ambient air quality.

Though the Report also suggested that it might be possible to prevent all deterioration, it is apparent that the measures necessary for that purpose would bring growth and development virtually to a standstill in many areas and therefore are incompatible with protecting the "productive capacity" of the Nation's population.

Clearly, it is not within the province of EPA, under either the Clean Air Act or any other statute, to impose limitations on the Nation's growth. Neither the Sierra Club nor any of the States or organizations that filed amicus curiae briefs with the Supreme Court in support of the Sierra Club's position argued that the District Court's preliminary injunction means that EPA must limit economic growth, as such, in order to prevent significant deterioration of air quality. To the contrary, it was agreed that growth could and would continue, albeit with the restrictions necessary to prevent significant deterioration.

The Sierra Club, for example, made the following statement:

> The development of rural areas will not be prevented by a prohibition against significant deterioration of air quality. Such a prohibition on its face does not prevent all increases in pollution. If the best available technological developments are utilized and if numerous pollution producing sources are not concentrated in one place, most industry can enter clean areas without causing significant deterioration. (p. 94)

And the State of California made the following statements:

> Prevention of significant deterioration of air quality does not foreclose the construction in clean air basins and partially polluted air basins of well-planned and well-disbursed fossil fuel power plants and other polluting industries which utilize, on a continuing basis, the best available technology. 'No significant deterioration' simply means that certain large and inadequately controlled pollution sources will not be permitted. (pp. 1-2) Of course, economic and social factors may well require some degradation of air quality in certain areas. But this case does not involve any question of prohibiting growth or prohibiting any deterioration of air quality. It is not a 'non-degradation' case. (p. 28)

There is, therefore, a consensus that the definition of significant deterioration is intended to represent some level above zero deterioration. An upper bound can also be established on the definition of significant deterioration by recognizing that existing regulations prevent deterioration to levels in excess of the secondary air quality standards.

Hence, any quantitative definition of significant deterioration must fall between the levels of zero deterioration and deterioration up to the secondary standards. Any quantitative definition within this range must be essentially subjective, because, within this range, data are not available with which to quantify any adverse impact on either public health or welfare.

Nationally, the steady deterioration in air quality over the last several decades has already been reversed by existing regulations, and air quality generally has begun to improve in the last few years. Further, this improvement will continue for the foreseeable future. The following table summarizes the expected reductions in total national emissions by 1980. The percentages shown are based on the national emissions of 1970, and include (i.e. "absorb") the growth in sources anticipated for the 1970–1980 period.

Pollutant:	*Percent Reduction in Emissions*
Particulates	40
Sulfur Dioxide	70
Carbon Monoxide	80
Oxides of Nitrogen	40
Hydrocarbons	60

However, even though the nationwide trend in emissions and air quality is favorable, in many local areas which are now quite clean there is the possibility that deterioration could occur. This is because trends in the nationwide averages are predominately influenced by severe emission controls being applied in the large urban areas to attain and maintain the national ambient air quality standards. These controls could drive major polluters into the semi-urban and rural areas, thereby degrading air quality in those areas to a degree that could approach (but not exceed) the secondary standards. Additionally, the growth patterns throughout the country are continually changing, and the normal economic expansion can be expected to lead to increased emissions in some local areas which previously were undeveloped. In some of these areas, the public may feel that the improved economic conditions do not justify the resulting environmental deterioration, even though that deterioration is insufficient to cause a quantifiable adverse impact on either the health or welfare of the population.

However, the future nationwide reduction in emissions, and hence in pollutant concentrations, will be significant. Although much of this reduction is being accomplished in highly industrialized urban areas in order to attain and maintain the national standards, a considerable reduction is also being accomplished in semi-urban areas already well below the standards. Depending upon the plan selected with which to prevent significant deterioration, much of this latter reduction could be used to accommodate future growth without significant deterioration. Further improvements in emission control technology would allow additional growth without causing significant deterioration. The proposed plans would serve to stimulate such improvements.

Nevertheless, it is not possible to rely solely on improved emission control technology to offset the increased emissions attendant to population and economic expansion and redistribution. Many areas of the country have virtually no man-made emissions. To establish a policy that new emissions can only be introduced to the extent that current emissions are reduced would forever relegate these areas to an essentially undeveloped status. This feature would, in turn, require that new pollution sources be located only in the semi-urban and urban areas of the country in which improved control technology would have the greatest impact. This would force the majority of the new emissions into these areas in which the majority of the Nation's population resides.

The relative significance of air quality versus economic growth may be a variable dependent upon regional conditions. For example, relatively minor deterioration of the aesthetic quality of the air may be very significant in a recreational area in which great pride (and economic development) is derived from the "clean air." Conversely, in areas with severe unemployment and little recreational value, the same level of deterioration might very well be considered "insignificant" in comparison to the favorable impact of new industrial growth with resultant employment and other economic opportunities. Accordingly, the definition of what constitutes significant deterioration must be accomplished in a manner to minimize the imposition of inequitable regulations on different segments of the Nation.

Many States have expressed the desire that federal regulations be promulgated in a manner which would permit all States to prevent significant deterioration without placing any individual states in unfairly advantageous or disadvantageous positions for attracting new industry. It is therefore desirable to insure that industry is provided with no incentive to "shop" for areas in which efforts to prevent significant deterioration are deliberately relaxed. Because the competition for new industry is extremely keen among many States, this would require that the philosophy for preventing significant deterioration be enforced uniformly throughout the Nation, even though the definition of what constitutes significant deterioration could include regional variations.

The problem of preventing significant deterioration can be somewhat simplistically, stated as that of reducing emissions to the lowest practicable level, and then distributing those residual emissions in a manner in which they do the least harm. The four alternative plans discussed herein would accomplish this at requiring application of best available control technology to all new or significantly modified major sources regardless of any expected level of deterioration. In addition, each plan is based upon a different type of decision criterion which would be used to determine whether a proposed new or significantly modified source would be permitted to commence construction in any specific location. The four decision criteria would be based upon (1) definition of "significant deterioration" as a constant increment in air quality applicable nationwide, (2) definition of "significant deterioration" as the greater of either a percentage increase in emissions or an emission increment, (3) definition of "significant deterioration" on a case-by-case basis by the public in the local area affected, and (4) definition of "significant deterioration" as one of two air quality increments depending upon land use projections by the State. Each of these plans are discussed in subsequent sections. However, all four plans contain several common features which are worthy of consolidated discussion.

Pollutants Subject to Deterioration Control

Each of the alternative proposals set forth below would require, as a minimum, that best available control technology be applied to certain categories of new sources of sulfur dioxide, particulate matter, carbon monoxide, hydrocarbons, and nitrogen oxides. Thus, this requirement would apply directly or, in the case of photochemical oxidents, indirectly to all pollutants covered by national ambient air quality standards.

The second basic requirement is a review to determine that individual new sources within the specified source categories will not cause significant deterioration. This requirement would applied only to particulate matter and sulfur dioxide. The other pollutants covered by national standards are related primarily or substantially to motor vehicle emissions. As a result of the application of EPA's emissions standards for new motor vehicles, total motor vehicle emissions are decreasing and will continue decreasing well into the future. Accordingly, the purpose of preventing significant deterioration related to carbon monoxide, hydrocarbons, nitrogen oxides, and photochemical oxidants is in the Administrator's judgment, adequately served by the proposed additional requirement for applying best available technology to new stationary sources.

Furthermore, the formation of photochemical oxidants from hydrocarbons and nitrogen oxides and the formation of nitrogen dioxide from nitric oxides involve complex photochemical processes which are time-dependent and related to atmospheric conditions and the interaction of emissions from a variety of sources. It is not possible to relate a specific isolated point source of hydrocarbons or nitrogen oxides to a specific

ambient concentration of photochemical oxidents or nitrogen dioxide because the techniques and assumptions that permit correlation of emissions with ambient air quality in multiple-source areas generally are not valid for application to point sources in relatively clean areas.

Sources Subject to Review

All the proposals set forth below would require preconstruction review of certain types of stationary sources. The proposed preconstruction review procedures are similar to those already required by State implementation plans. These procedures require that source owners or operators submit data to the State and apply for approval to construct, and that the State approves or disapproves the request based on specific criteria. In relation to air quality deterioration, the criteria for this "yes or no" decision are inherent in each plan proposed herein, and are described in the section on each plan.

The initial list of sources proposed for this specific review in each plan represents the Administrator's best judgment as to which sources, in and of themselves, have the potential for causing "significant deterioration" as defined by the four alternative plans. The proposed regulations contain sixteen source categories which currently account for approximately 30 percent of the particulate matter and 75 percent of the sulfur dioxide emitted into the atmosphere each year nationwide, and account for essentially all of these pollutants emitted in clean areas. The regulations also require that any other sources emitting more than 4000 tons of sulfur dioxide or particulate matter annually be subjected to this review.

It is important to note that under the three alternative plans which place a ceiling on pollutant concentrations or emissions from an area, this initial list of sources will be subject to revision as an area approaches its ceiling.

The list of source categories has been restricted in the proposed regulations because it is considered unwise and unnecessary to divert available resources from other air pollution control activities in order to review new sources which do not have the potential to violate the proposed decision-making criteria. It may eventually be necessary to establish a mechanism for making advance assessments of the aggregate air quality impact of smaller sources. Such a mechanism is likely to involve projections of future growth and estimates of air quality impact, similar to those required by the recently promulgated amendments (38 FR 15834, dated June 18, 1973) to new source review requirements applicable to State implementation plans.

Best Available Control Technology

Each of the plans proposed herein would require, as a minimum, application of "best available control technology" (BACT) to specified categories of new sources. The proposed regulations specify that control systems adequate to comply with new source performance standards (NSPS) promulgated under section 111 of the Clean Air Act generally will be considered BACT (with the exception noted below). The proposed regulations also specify that until such time as new source performance standards (NSPS) are promulgated, BACT for a particular source will be determined by considering: reasonably available control technology [as defined in Appendix B to the Administrator's regulations for the preparation, adoption, and submittal of state implementation plans (40 CFR Part 51)]; the processes, fuels, and raw materials to be employed by an affected source; the engineering aspects of the application of various types of control techniques; and the cost of employing the available control techniques, including hardware and alterantive processes, fuels, and raw materials. However, all specified sources are expected to be covered by NSPS within 18 to 24 months and, because NSPS generally represent the lowest practicable level of emissions, the attainment of NSPS will generally be compatible with application of BACT.

The proposed exception to this equivalency of NSPS to BACT exists with respect to sulfur dioxide emissions from fossil fuel-fired steam electric plants. The levels of emissions from these plants have an extremely wide range due to the varying amounts of sulfur in fuels available in different parts of the country. Current NSPS are set at a level which requires use of a control system on plants burning high sulfur coal. However, in some regions, coal with sulfur content low enough to meet the NSPS is readily available and would be used even in the absence of emission limitations. In these situations, use of the low sulfur regional coal with no additional efforts to control sulfur dioxide emissions would not automatically constitute application of BACT. This use of NSPS as a maximum emission limitation, with the possibility of requiring additional control on a case-by-case basis, is being proposed because the NSPS are designed for uniform application nationwide, whereas significant deterioration is essentially a local or regional issue. Therefore, each of the proposed regulations requires that a case-by-case analysis of fossil fuel-fired electric plants be conducted to determine if emissions can and should be further reduced.

Alternatively, control systems adequate to meet NSPS could be considered BACT in all cases where NSPS exist, including the case of fossil fuel-fired electric generating plants. Since NSPS are required to reflect "the degree of emission limitation achievable through the application of the best system of emission reduction which (taking into account the cost of achieving such reduction) the Administrator determines has been adequately demonstrated," they could be considered to represent a sufficient degree of emission control to prevent significant deterioration "to the maximum extent practicable," in all areas. This alternative definition of BACT is not specifically included in the proposed regulations but since it is arguably consistent with the District Court's preliminary injunction, it is described herein and specifically called to the attention of all interested parties so that there will be an adequate opportunity for public comment thereon.

Baseline for Measuring Deterioration

Most of the plans which have been considered for preventing significant deterioration require that an identifiable level of air quality or emissions be established as a baseline from which to measure deterioration. The three principal alternatives which have been considered are the level existing in 1970 (to correspond to passage of the Clean Air Act), the level existing in 1972 (to correspond to the litigation to which these proposals are related), and the level existing in 1973 (to correspond to these proposed regulations.)

The use of 1970 as a nationwide baseline would present several practical problems. Foremost among these is that in the interim between 1970 and the current time, growth patterns have changed sufficiently that, although the nationwide air quality has improved substantially, in some (particularly non-urban) areas the air quality has already deteriorated—in some places to the extent that the deterioration could be considered significant under some alternative plans. The status of sources which have received prior authorization to construct in these areas would become questionable. Yet, it does not appear equitable to withdraw that authorization due to newly promulgated regulations. In many other areas, air quality could have improved so dramatically that use of 1970 as a baseline would render any deterioration regulations virtually meaningless.

In addition, the availability of air quality data from which to measure deterioration represents a severe problem. Generally, air monitoring has been most intensive in heavily polluted areas. There has been only scattered monitoring in relatively clean areas. However, it is in these relatively clean areas that the deterioration issue is most critical, and to effectively apply most deterioration plans it is essential that relatively precise baseline data be available. Even today, the precise air quality or emission levels in many of these areas are unknown: this problem is compounded if baseline requirements are extended into the past.

However, the use of 1973 as a baseline year is also impractical, because the baseline must be established upon data for an entire year. Since annual data for 1973 could not be made available in sufficient time for initial application of these regulations, the use of 1973 would require that all data be estimated.

For these reasons, those plans discussed herein which require establishment of a baseline air quality or emission level are developed around the measured or estimated data for 1972. This minimizes, but does not eliminate, the problems associated with lack of data. It also tends to minimize many inequities associated with use of prior year baselines. It does, however, retain the problem regarding treatment of new or modified sources which